In the Supreme Court of the United States

Case No. 77-327

EDGAR I. SHOTT, JR.,
Petitioner,

v.

THOMAS L. STARTZMAN,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

WILLIAM J. BROWN
Attorney General

THOMAS V. MARTIN
Assistant Attorney General
State Office Tower,
Floor 17
30 East Broad Street
Columbus, Ohio 43215
(614) 466-8240
Attorneys for Respondent

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STATEMENT OF THE CASE

The petitioner, Edgar I. Shott, Jr., was convicted of selling securities without a license and was sentenced to a term of one to five years in the penitentiary.

The Cincinnati Bar Association instituted disciplinary proceedings against the petitioner. In those proceedings the Supreme Court of Ohio found that the petitioner had been convicted of a crime involving moral turpitude and, on April 19, 1967, permanently disbarred him from the practice of law. *Cincinnati Bar Assn.* v. *Shott,* 10 Ohio St. 2d 117 (1967).

On February 25, 1977 petitioner filed with the respondent clerk of the Supreme Court of Ohio a petition for reinstatement to the practice of law. The clerk refused to accept the petition for reinstatement.

Rule V(7) of the Rules of the Supreme Court of Ohio for the Government of the Bar, which was in effect at the time of petitioner's disbarment, provides in pertinent part as follows:

> A person disbarred * * * shall never thereafter be admitted to the practice of law in this State.

Petitioner instituted an original action in the Supreme Court of Ohio to compel the clerk to accept his petition for reinstatement. The Supreme Court of Ohio on June 3, 1977 sustained a motion to dismiss filed by the clerk and dismissed the action. (App. A of Petition.)

ARGUMENT

There Is No Important Question Of Federal Law.

The issue presented in this case is whether the State of Ohio may properly provide that an attorney who has been disbarred may not be readmitted to the practice of law in the state.

The states have a compelling interest in regulating the practice of professions within their boundaries and they are given wide latitude in determining what standards are appropriate for such regulation. *Goldfarb* v. *Virginia St. Bar*, 421 U.S. 773, 792 (1975).

The interest of a state in the regulation of the practice of law is particularly important. The quality of the practice of law has a vital effect upon the public welfare. The requirement of high standards for attorneys is necessary not only to assure the orderly and efficient administration of justice but also to assure the public of proper counseling and representation. There are few areas of activity which do not have serious legal implications and the authority and responsibility conferred upon attorneys is extraordinary. *Ibid.; Schware* v. *Bd. of Bar Examiners*, 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring).

Respondent recognizes that the power of a state to regulate the practice of law may not be exercised in an arbitrary or discriminatory manner. *Konigsberg* v. *Bd. of Examiners*, 353 U.S. 252, 273 (1957). Respondent also recognizes that it may not be exercised in a way which infringes upon constitutional rights. *Bates* v. *St. Bar of Arizona*, ... U.S. ....., 97 S.Ct. 2691 (1977); *United Transportation Un.* v. *St. Bar of Michigan*, 401 U.S. 576 (1971). So long as the state does not exercise its power in such a manner, however, it has autonomous control over the practice of law. *Theard* v. *United States*, 354 U.S. 278, 281 (1957).

The challenged rule does not infringe upon any constitutional right. The right to practice law may well be an important property or liberty interest within the meaning of the due process clause. It is not a right, however, which has specific constitutional protection. A state may properly adopt a law which adversely affects important property or liberty interests. *San Antonio Ind. School Dist.* v. *Rodriguez*, 411 U.S. 1, 31 (1973). The Constitution merely requires that the legislation be addressed to a legitimate end and that the means taken are reasonable and appropriate to that end.

State laws regulating professions and occupations are granted the same deference as state laws in the area of economics and social welfare. Such laws will be upheld so long as they have a rational basis and are free from invidious discrimination. *Weinberger* v. *Salfi*, 422 U.S. 749, 769-770 (1975); *Dandridge* v. *Williams*, 397 U.S. 471, 485-486 (1970).

The State of Ohio has determined that attorneys who have been found guilty of serious misconduct should not be permitted to practice law. Respondent submits that this determination cannot be characterized as arbitrary. Rule V(7) and the other Rules for the Government of the Bar of Ohio are intended to maintain high professional standards for members of the bar and protect the public from misconduct on the part of lawyers. The elimination from the bar of attorneys who have been found guilty of serious misconduct is reasonably related to that goal.

Rule V(7) does create a distinction between attorneys found guilty of misconduct. Those who have engaged in more serious misconduct are permanently disbarred. The others receive an indefinite suspension. This distinction, however, is not an invidious one. The fact that attorneys who have engaged in more serious misconduct receive a more serious punishment cannot be characterized as arbitrary.

The fact that attorneys who have engaged in less serious misconduct are permitted to apply for readmission to the bar does not defeat the reasonableness of the law. The risk to the public if such an attorney were mistakenly readmitted is obviously less. In addition, the purpose of protecting the public from misconduct by attorneys is furthered by requiring attorneys, who have engaged in even minor misconduct, to establish that they are rehabilitated before they are readmitted to practice. *Compare Massachusetts Retirement Bd.* v. *Murgia,* 427 U.S. 307, 316 n. 10 (1976).

Petitioner refers to his permanent disbarment as a "professional death penalty." Respondent submits that an attorney who has engaged in serious misconduct involving moral turpitude should not be permitted to collaterally attack the severity of the discipline he received. In any event this Court has upheld several laws imposing consequences for misconduct which could be labelled as some type of death penalty. *See, e.g., Richardson* v. *Ramirez,* 418 U.S. 74 (1974) (permanent disenfranchisement of convicted felons); *De Veau* v. *Braisted,* 363 U.S. 144 (1960) (felons ineligible to hold union office); *Hawker* v. *New York,* 170 U.S. 189 (1898) (felons excluded from practice of medicine). *Cf. Fleming* v. *Nestor,* 363 U.S. 603, 613-617 (1960).

Respondent respectfully submits that this Petition raises no important federal question. The challenged rule is reasonably related to legitimate and compelling state

interests, the maintenance of high professional standards for members of the bar and the protection of the public from misconduct on the part of attorneys. Respondent submits that the rule is clearly valid under the criterion established by previous decisions of this Court.

There Is No Conflict Of Decisions.

Petitioner does not even claim that the ruling of the Supreme Court of Ohio is in conflict with any decision of this Court. His claim is that the decisions of this Court in the area of conclusive presumptions cannot be reconciled.

Respondent respectfully submits that this Court in *Weinberger* v. *Salfi, supra,* 422 U.S. 749, has already reconciled the previous decisions in this area. The opinion explains that in the area of economics and social welfare a legislative classification will not be found invalid merely because it is imperfect. Such a classification is consistent with the Constitution so long as it is rationally based and free from invidious discrimination. (*Id.* at 768-770.)

The opinion then reviews the decisions which had invalidated legislation on the ground that it created a conclusive presumption. In *Cleveland Bd. of Educ.* v. *LaFleur,* 414 U.S. 632 (1974); and *Stanley* v. *Illinois,* 405 U.S. 645 (1972) the statutes imposed burdens upon constitutionally protected rights.

In *Vlandis* v. *Kline,* 412 U.S. 441 (1973), the statute purported to be concerned with residency. The statute, however, denied a person the opportunity to show factors relating to that issue. *Id.* at 771.

If the doctrine in these cases were extended to other areas of legislation, it would invalidate countless legislation which had previously found wholly consistent with the Constitution. It would also represent a degree of judicial

involvement in the legislative process which the court had avoided except in the most unusual circumstances. (*Id.* at 772.)

There is no reason to extend the "conclusive presumption" doctrine to the rule challenged in this case. The rule does not impose a burden upon any constitutionally protected right. The rule is not arbitrary. It is reasonably related to legitimate and compelling state interests.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for certiorari should be denied.

Respectfully submitted,

WILLIAM J. BROWN
Attorney General

THOMAS V. MARTIN
Assistant Attorney General
State Office Tower,
Floor 17
30 East Broad Street
Columbus, Ohio 43215
(614) 466-8240
Attorneys for Respondent